

Residential Tenancies Tribunal

Decision 20-0523-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 am on 04 February 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The tenant, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking an order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 10, 24 and 42 of the *Residential Tenancies Act, 2018* and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord

submitted an affidavit with his application stating that he had sent the notice of the hearing to the tenant by registered mail on 29 December 2020. According to the associated tracking history, that notice was not collected by the tenant and it was returned to the landlord. Although the tenant had not received notice of this hearing, section 42.(6) of the *Residential Tenancies Act, 2018* states that as long as the notice was properly addressed and sent, it is considered to have been served on her on the fifth day after mailing—in this case, on 03 January 2021. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord called the following witness:

- [REDACTED] (“[REDACTED]”) – upstairs tenant at [REDACTED]

Issue 1: Vacant Possession of the Rented Premises

Relevant Submissions

8. The landlord stated that he had entered into 1-year, fixed-term rental agreement with the tenant on 01 March 2019 and a copy of that executed lease was submitted with the landlord’s application. The agreed rent was set at \$750.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$375.00.
9. The landlord stated that after the tenant moved into the unit, he began to receive constant complaints from the occupants in the upstairs apartment, [REDACTED] and her husband. He stated that they had been complaining about noise coming from the tenant’s unit and about people constantly visiting the tenant’s apartment. He also stated that [REDACTED] told him that she can smell cigarette and cannabis smoke coming from the tenant’s unit, despite the fact that the lease states that there is to be no smoking in these units.
10. [REDACTED] was called as a witness. She also pointed out that their apartments are supposed to be non-smoking units and she complained that she can smell cigarette and cannabis smoke in her apartment. She claimed that the smell is very strong and she finds it difficult to breathe as she is allergic to cigarette smoke. She also claimed that her children find the smell unpleasant and they do not want to go in their bedrooms where it is particularly strong.
11. [REDACTED] also complained that there is a lot of noise coming from the tenant’s unit, including loud music which can be heard at all times of the day. She also stated that the police have visited the tenant’s unit on multiple occasions and she testified that she even had to call them herself on several occasions.
12. [REDACTED] also claimed that the tenant’s visitors will oftentimes park behind the cars in her driveway, preventing her from leaving. She stated, though, that when she

attempts to ask the tenant to move the vehicles, she refuses to answer her door. She also stated that when the police have visited the tenant she also refuses to respond to them as well.

13. As a result of these complaints, on 11 August 2020, the landlord issued the tenant a termination notice and a copy of that notice was submitted with his application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 31 August 2020.
14. The landlord stated that the tenant has not moved out, as required, and he claimed that her behaviour has not improved since. He is seeking an order for vacant possession of the rented premises.

Analysis

15. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

7. Peaceful Enjoyment and Reasonable Privacy -

(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

and according to section 24 of this Act:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- (a) *be signed by the landlord;*
- (b) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) *be served in accordance with section 35.*

16. I found the testimony of [REDACTED] to be credible and I accept her claim that she can smell smoke in her apartment, coming from the tenant's unit, and that the tenant is frequently noisy. I also accept her claim that the tenant's visitors have been disruptive.

17. That sort of behaviour, as described by [REDACTED], is unreasonable, especially given that there is a family living in the apartment directly above the tenant, and I accept [REDACTED]'s claim that this behaviour has been interfering with her quiet and peaceful enjoyment of her apartment.

18. Accordingly, based on the reports the landlord had received from [REDACTED], I find that he was in a position, on 11 August 2020, to issue the tenant a notice under section 24 of the Act.

19. As the termination notice also meets the timeframe requirements set out under that section, it is valid.

Decision

20. The landlord's claim for an order for vacant possession of the rented premises succeeds.

21. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

10 February 2021

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal